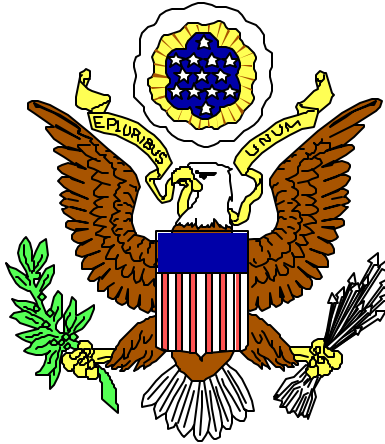


UNITED STATES DISTRICT COURT

FOR THE

WESTERN DISTRICT OF NEW YORK



LOCAL RULES OF CRIMINAL PROCEDURE

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**IN RE ADOPTION OF LOCAL RULES OF CRIMINAL PROCEDURE
FOR THE
WESTERN DISTRICT OF NEW YORK**

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES DISTRICT COURT JUDGES

David G. Larimer, Chief Judge U.S. Courthouse, Rochester, NY
Richard J. Arcara U.S. Courthouse, Buffalo, NY
William M. Skretny U.S. Courthouse, Buffalo, NY
Charles J. Siragusa U.S. Courthouse, Rochester, NY
John T. Curtin, Senior Judge U.S. Courthouse, Buffalo, NY
John T. Elfvin, Senior Judge U.S. Courthouse, Buffalo, NY
Michael A. Telesca, Senior Judge U.S. Courthouse, Rochester, NY

UNITED STATES BANKRUPTCY JUDGES

John C. Ninfo II, Chief Judge U.S. Courthouse, Rochester, NY
Michael J. Kaplan U.S. Courthouse, Buffalo, NY
Carl L. Bucki U.S. Courthouse, Buffalo, NY

UNITED STATES MAGISTRATE JUDGES

Leslie G. Foschio Buffalo, NY
Hugh B. Scott Buffalo, NY
Jonathan W. Feldman Rochester, NY
William G. Bauer Rochester, NY
H. Kenneth Schroeder, Jr. Buffalo, NY
Edmund F. Maxwell Buffalo, NY

CLERK OF UNITED STATES DISTRICT COURT

Rodney C. Early Buffalo, NY

DEPUTY-IN-CHARGE

Rachel B. Bandy Rochester, NY

CLERK OF UNITED STATES BANKRUPTCY COURT

Paul R. Warren Buffalo, NY

DEPUTY-IN-CHARGE

Todd M. Stickle Rochester, NY

UNITED STATES ATTORNEY

Denise E. O'Donnell Buffalo, NY

ASSISTANT UNITED STATES ATTORNEY-IN-CHARGE

Bradley E. Tyler Rochester, NY

CHIEF PROBATION OFFICER

Joseph A. Giacobbe Buffalo, NY

DEPUTY CHIEF PROBATION OFFICER

Thomas J. McGlynn Rochester, NY

UNITED STATES MARSHAL

John P. McCaffrey Rochester, NY

CHIEF DEPUTY UNITED STATES MARSHAL

James Alduino Buffalo, NY

TERRITORIAL JURISDICTION

Counties of:

Allegany	Genesee	Orleans	Wyoming
Cattaraugus	Livingston	Schuyler	Yates
Chautauqua	Monroe	Seneca	
Chemung	Niagara	Steuben	
Erie	Ontario	Wayne	

With the waters thereof.

Plans adopted by the United States District Court for the Western District of New York

Copies of the following plans that have been adopted by the Court are available on request in the Clerk's offices in Rochester and Buffalo¹:

- # **Civil Justice Expense and Delay Reduction Plan**
- # **Court Reporter Management Plan**
- # **Criminal Justice Act Plan**
- # **Jury Plan**
- # **Plan for the Administration of the District Court Fund**
- # **Revised Plan for the Prompt Disposition of Criminal Cases**
- # **Standing Order Governing Claims under the Racketeer Influenced & Corrupt Organizations Act**

¹The listed plans are for reference only and may be modified or abrogated by the Court in its discretion.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

LOCAL RULES OF CRIMINAL PROCEDURE

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LOCAL RULES OF CRIMINAL PROCEDURE

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RULE 1.1

TITLE

These rules shall be known as the Local Rules of Criminal Procedure for the United States District Court for the Western District of New York. These rules supplement the Federal Rules of Criminal Procedure.

RULE 1.2

THE "COURT"

Wherever in these local rules reference is made to the "Court", "Judge", or similar term, such term shall be deemed to include a Magistrate Judge unless the context requires otherwise.

RULE 6

GRAND JURY

(a) Grand juries may be summoned by order of the Court at such times as the public interest requires, to serve until discharged by the Court consistent with 18 U.S.C. §§ 3321, 3322 and Federal Rule of Criminal Procedure 6.

(b) All grand jury proceedings are governed by Federal Rule of Criminal Procedure 6.

(c) All motions for relief from orders or process of the grand jury, such as motions to quash subpoenas or motions to hold a witness in contempt, shall be made returnable before the Judge who impaneled the grand jury, or his or her designee.

RULE 7

FILING CASES

(a) Every criminal case shall be assigned by the Clerk to a Judge of the District upon the filing of the indictment or information.

(b) For purposes of case assignment, the Western District of New York is divided into two areas. Cases arising in the eight western counties: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming (the "Buffalo area"), shall ordinarily be assigned to a Judge in Buffalo. Cases arising in the nine eastern counties: Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates (the "Rochester area"), shall ordinarily be assigned to a Judge in Rochester. The assignment within these areas shall ordinarily be by random selection.

RULE 12.1

PROCEDURES FOR CRIMINAL CASES

Unless otherwise ordered by the Judge to whom a criminal case is assigned, the following procedures shall apply to criminal indictments and informations:

(a) A United States Magistrate Judge is authorized to arraign defendants and accept not guilty pleas pursuant to Federal Rules of Criminal Procedure 10 and 11. Arraignments shall be held before the Judge only if a Magistrate Judge is unavailable in the city in which the defendant will stand trial.

(b) After providing the attorneys for the government and all defendants the opportunity to be heard, at arraignment or at a date set at the arraignment, the Judge or Magistrate Judge shall issue an order scheduling discovery and motion practice in all criminal cases. Such scheduling order shall include, but not be limited to, the following:

(1) dates and terms and conditions for providing discovery between the government and the defendants;

(2) dates for filing motions, responses thereto, and oral arguments of motions; and

(3) such other matters as the Judge or Magistrate Judge deems appropriate in the exercise of his or her discretion and his or her supervisory powers.

(c) Unless authorized by the Judge or Magistrate Judge, all motions by a defendant or the government shall be made returnable on the same date.

(d) Such scheduling order may subsequently be changed only by leave of the Court.

(e) As soon as practicable after the return of motions, the trial attorneys in the case shall meet with the Judge to set a trial date and schedule any required pre-trial hearing.

RULE 12.2

MOTION PRACTICE

Unless otherwise ordered by the Court:

(a) Motions and hearings on all contested matters shall be heard on the dates and times set by each individual Judge in the Western District of New York. Information regarding such dates and times may be obtained from the Clerk's office.

(b) If the Judge assigned to hold the Court shall be absent, the Clerk of the Court shall adjourn the hearings on motions or applications to some convenient day.

(c) All motions and notice thereof shall be governed by the Federal Rules of Criminal Procedure. Original motion papers shall be filed in the Clerk's office, either at the United States Courthouse, Buffalo, New York or at the United States Courthouse, Rochester, New York.

(d) Any application for adjournment of a motion shall be made by the attorney, or by an associate, to the courtroom deputy of the Judge before whom the motion is to be argued. No such application is to be made to a Judge's law clerk. In requesting an adjournment, the following guidelines shall be adhered to:

(1) The party seeking the adjournment shall first confer with all other parties before approaching the courtroom deputy;

(2) A suggested rescheduled date, agreeable to all parties, shall be determined, if possible;

(3) The party seeking the adjournment shall notify the courtroom deputy in writing, unless unforeseen circumstances prohibit written notice, of the request and the suggested new date; and

(4) The reason for the adjournment must be placed on the record either in open court or in writing, so that the Court may make findings as may be required by the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174.

RULE 15

PROCEDURES FOR DEPOSITIONS BY OTHER THAN STENOGRAPHIC MEANS

A deposition by other than stenographic means (i.e. without the use of a stenographic record) may be taken only upon order of the Court. A deposition to be recorded on video tape and by stenographic means requires no prior order. The following procedures shall be followed:

(1) The deposition notice shall state that the deposition will be recorded both stenographically and on video tape. At the deposition, the operator of the camera shall be identified; however, nothing shall preclude utilization of an employee of the attorney who noticed the deposition from acting as the camera operator.

(2) The camera shall be directed at the witness at all times showing a head and shoulders view, except that close-up views of exhibits are permitted where requested by the questioning attorney.

(3) Prior to trial, counsel for the party seeking to use the deposition at trial shall approach opposing counsel and attempt to resolve voluntarily all objections made at the deposition.

(4) Unresolved objections shall be submitted to the Court by way of a motion in limine made by the party seeking to use the deposition at trial. The motion may be made at any time after the deposition, but shall be made no later than one week before trial or in compliance with any date established by applicable order of the Court. The objected-to portion(s) of the transcript shall be annexed to such motion papers.

(5) In accordance with the Court's ruling on objections, the party seeking to use the deposition shall notify opposing counsel of the pages and line numbers of the deposition transcript which the party plans to delete from the video tape. The party seeking to use the video tape deposition at trial shall then edit the tape accordingly, and shall bear the expense of editing. If the Court overrules an objection made during the deposition, such objection need not be deleted. If requested, an instruction from the Court at the time the deposition is shown regarding objections heard on the tape will be given.

(6) At least three days before showing the tape, the party seeking to use the tape at trial shall deliver a copy of the edited tape to opposing counsel. Opposing counsel may only object at that time if the edited version does not comply with the Court's ruling and the agreement of counsel set forth above, or if the quality of the tape is such that it will be difficult for the jury to understand. Such objections, if any, must be made in writing and served at least 24 hours before the tape is to be shown.

(7) The party seeking to use the video tape deposition must provide the equipment necessary to do so in court.

RULE 24.1

JURY TRIALS IN CRIMINAL CASES

Jury selection in a criminal case shall be governed by Federal Rules of Criminal Procedure 23 and 24 and by such procedures established by the trial judge.

RULE 24.2

JURORS

Selection of petit jurors is made by random selection from voter registration lists and New York State Department of Motor Vehicles records pursuant to the Jury Selection Plan for the Western District of New York dated February 18, 1994, and approved by the Second Circuit Judicial Council. A copy of the Plan is available in the Clerk's office.

RULE 26

EXHIBITS

(a) Prior to the beginning of a criminal trial, the exhibits shall be marked and exhibit lists prepared as the Court directs.

(b) Unless the Court otherwise directs, exhibits (except those produced by non-parties) shall not be filed with the Clerk but shall be retained in the custody of the respective attorneys who produce them in court. Immediately after the case is submitted to the trier of fact, all exhibits which were received into evidence shall be delivered to the courtroom deputy. In the case of an appeal or other review by an appellate court, all such exhibits necessary to perfect the appeal shall be made available for inclusion in the record on appeal pursuant to the Federal Rules of Appellate Procedure. Upon expiration of the time allowed for appeal, the Clerk shall notify the parties that the exhibits must be claimed within thirty days. Any unclaimed exhibits may be destroyed without further notice to the parties.

RULE 32

PRESENTENCE REPORT

(a) Disclosure of presentence investigation reports shall, for sentencing purposes, be in accordance with Federal Rule of Criminal Procedure 32.

(b) No presentence investigation reports shall be disclosed for any purpose other than sentencing in the absence of a compelling demonstration to the Court that disclosure of the report is required to meet the ends of justice.

(c) No copies of any report of presentence investigation shall be made by the government, the defendant, or any third party, except upon order of the Court.

(d) Any application to disclose such report shall be made to the sentencing Judge.

RULE 44

ASSIGNMENT OF COUNSEL

(a) Pursuant to the Criminal Justice Act of 1964 as amended, 18 U.S.C. § 3006A, the Judges of the United States District Court for the Western District of New York have adopted a Plan for the adequate representation of any person otherwise financially unable to obtain representation.

(b) A panel of attorneys has been established under the Plan from which a Judge or a Magistrate Judge may appoint counsel in a particular case. Any attorney admitted to practice in the Western District of New York may seek assignment to the panel by written request to one of the Judges. If the Judge determines that the attorney has demonstrated competence in criminal law, he or she shall add the attorney to the panel by written order. For good cause shown, and after notice and an opportunity to be heard, an attorney may be stricken from the panel. In addition to assignment from the panel of attorneys established under the Plan, the Court shall, whenever appropriate, appoint the Federal Public Defender.

(c) A copy of the Plan is available in the Clerk's office. Reference should be made to the statute for further details, including procedures for obtaining payment for work done and/or reimbursement for expenses.

(d) It should be noted that under Rule 4(b) of the Rules of the Second Circuit Court of Appeals supplementing Federal Rules of Appellate Procedure, trial counsel has the duty to continue representing a defendant through the appellate process. Assigned counsel are advised to consider their appellate responsibilities when accepting criminal trial assignments.

RULE 46

DEPOSITS OF MONEY INTO COURT

(a) General Orders Regarding Funds. The Court's directions to the Clerk regarding (1) the investment of monies placed in the custody of the Court or of the Clerk and (2) the assessment of court fees against such monies are contained in various General Orders of the Court and amendments thereto, available in the Clerk's offices.

(b) Monies Deposited Without a Special Order. Whenever money is permitted by statute or rule to be deposited into court without leave of court (e.g. in condemnation proceedings governed by Federal Rule of Civil Procedure 71A(j), or is directed by the Court to be deposited as a condition to some form of relief (e.g. cash bail, cash bonds), General Orders shall govern the investment of such funds upon their receipt by the Clerk.

(c) Monies Deposited With a Special Order. Whenever statute or rule requires that leave of court be obtained for the deposit of money into the court (e.g. Federal Rule of Civil Procedure 67), a proposed order granting such leave must be approved as to form by the Clerk, the Chief Deputy Clerk or the Financial Deputy Clerk before submission to the Court, and notice of the granting of such order must be served upon the person of the Clerk, the Chief Deputy Clerk or the Financial Deputy Clerk. If and to the extent that any such order fails to instruct the Clerk as to the handling of such funds, they shall be handled in accordance with the aforesaid General Orders.

(d) Court Fees. Such fees are promulgated and required by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1914(b) and are enforced locally by this Court's General Order of August 31, 1994 and any amendments thereto. In no event may the Clerk be instructed not to collect court fees from funds in the Clerk's custody.

(e) Disbursing/Reinvesting Orders. Any proposed order for disbursement or reinvestment of such funds must be approved as to form by the Clerk, Chief Deputy Clerk, or Financial Deputy Clerk before submission to the Court.

(f) Alternatives. Parties and others are encouraged to consider alternatives which do not involve the receipt of monies by the Clerk, such as escrow accounts, joint signature accounts in the names of counsel, and letters of credit. Such alternatives avoid the imposition of court fees and may provide greater flexibility to maximize yield for the benefit of the parties.

RULE 49.1

SERVICE AND FILING OF PAPERS

(a) All pleadings, notices and other papers shall be served and filed in accordance with the Federal Rules of Criminal Procedure.

(1) A party seeking or opposing any relief under the Federal Rules of Criminal Procedure shall file only such portion(s) of a deposition, interrogatory, request for documents, request for admission, or other material that is pertinent to the application.

(2) A party seeking to include in a record on appeal material which was not previously filed shall apply to the Court for an order requiring the Clerk to file such material. The party may make such application by motion or by stipulation of counsel.

(b) All orders, whether issued on notice or ex parte, together with the papers on which they were granted, shall be filed forthwith.

(c) Unless otherwise provided by the Court, a moving party who wishes to file reply papers shall file and serve the notice of motion and supporting papers at least fifteen business days prior to the return date of the motion. The notice of motion shall also state that the moving party intends to file and serve reply papers and that the opposing party is therefore required to file and serve opposing papers at least eight business days prior to the return date. Reply papers shall be filed and served at least three business days before the return date. Under all other circumstances, and except as ordered otherwise by the Court, notices of motion together with supporting affidavits and memoranda shall be served on the parties and filed with the Clerk at least ten business days prior to the return date of the motion. Answering affidavits and memoranda shall be served and filed at least three business days prior to the return date. Sur-reply papers shall not be permitted unless a party is directed otherwise by the Court.

(d) A party wishing to shorten the notice requirement prescribed in subparagraph (c) shall make written application to the Court for an expedited hearing on the motion pursuant to Rule 45(d) of the Federal Rules of Criminal Procedure. Such application shall contain a clear and specific showing by affidavit of good and sufficient reasons why procedure other than by notice of motion is necessary.

(e) Without prior approval of the Court, briefs or memoranda in support of or in opposition to any motion shall not exceed twenty-five pages in length and reply briefs shall not exceed ten pages in length. Applications to exceed these page limits shall be made in writing by letter to the Court with copies to all counsel.

(f) Good cause shall be shown for the making of any application ex parte. The papers in support of such application shall state attempts made to resolve the dispute through a motion on notice and/or state why notice of the application for relief may not be given.

(g) No filed document shall be removed from the Court except on order of the Court.

(h) Unless otherwise specified by statute or rule or requested by the Court, only the original of any papers shall be accepted for filing. Parties are directed not to submit courtesy copies of papers, except upon request of the Court.

(i) Service of all papers other than a subpoena or a summons and complaint shall be permitted by dispatching the paper to the attorney by overnight delivery service at the address designated by the attorney for that purpose, or if none is designated, at the attorney's last known address. Service by overnight delivery service shall be complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. Where a period of time prescribed by either the Federal Rules of Criminal Procedure or these rules is measured from the service of a paper and service is by overnight delivery, one business day shall be added to the prescribed period. "Overnight delivery service" means any delivery service which regularly accepts items for overnight delivery to any address within the jurisdiction of the Court.

(j) No papers shall be served by electronic means (e.g. FAX phone) unless the parties stipulate in advance in accordance with Local Rule of Criminal Procedure 49.3 to accept service by this means. Without such prior stipulation, such attempted service shall be considered void. No papers shall be filed with the Clerk by electronic means.

RULE 49.2

FORM OF PAPERS

(a) All pleadings and other papers shall be plainly and legibly written, typewritten, printed or reproduced, without erasures or interlineations materially defacing them, in ink on durable white 8½" x 11" paper of good quality and fastened in durable covers. All documents presented for filing shall be pre-punched with two normal-size holes (approximately ¼" diameter), centered 2¾" apart, ½" to ⅞" from the top edge of the document.

(b) All papers shall be endorsed with the name of the Court, the title of the case, the proper docket number and the name or nature of the paper, in sufficient detail for identification. All papers shall be signed by an attorney or by the defendant if appearing without counsel, and the name, address and telephone number of each attorney or defendant so appearing shall be typed or printed thereon. All papers shall be dated.

(c) Papers containing responses to written questions or demands, shall set forth each question or demand verbatim with the party's response set forth immediately thereafter.

RULE 49.3

STIPULATIONS

All stipulations affecting a case before the Court, except stipulations which are made in open court and recorded by the court reporter, shall be in writing and signed, and shall be filed. Except to prevent injustice, no stipulation which does not satisfy these requirements shall be given effect.

RULE 49.4

ORDERS

Orders of discontinuance or dismissal, whether by consent or otherwise, shall be presented to the Court for signature. After the Court has instructed a prevailing party to submit an order, the prevailing party shall submit to the Court a proposed order which has been approved by opposing counsel and which contains the endorsement of opposing counsel: "Approved as to form and substance."

RULE 49.5

APPEALS

(a) Appellant shall file a notice of appeal in accord with Federal Rule of Appellate Procedure 3. Such notice of appeal shall include the names of the parties to the judgment and the names and addresses of their respective attorneys of record.

(b) In addition to the original notice of appeal, appellant shall file sufficient copies to serve all counsel and the Clerk of the Circuit Court of Appeals.

(c) Counsel share the responsibility of preparing the index for the record on appeal. Upon completion, the index shall be presented to the Clerk for transmittal to the United States Court of Appeals for the Second Circuit or to the United States Supreme Court.

(d) Counsel shall, wherever possible and consistent with the Federal Rules of Appellate Procedure, stipulate to the designation of less than the entire trial record.

(e) Counsel are cautioned to examine and follow both the Federal Rules of Appellate Procedure and the Rules of the United States Court of Appeals for the Second Circuit.

RULE 50

SPEEDY TRIAL

(a) Pursuant to the requirements of Federal Rule of Criminal Procedure 50(b), the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174, and the Federal Juvenile Delinquency Act, 18 U.S.C. §§ 5031-5037, the Judges of the Western District of New York have adopted a "Plan for the Prompt Disposition of Criminal Cases". This Plan incorporates the time limits which must be observed for filing an indictment or information, for arraignment, and for commencement of trial. It also sets out the procedures to be followed in this District for compliance with the above statutory mandates. A copy of the Plan is available in the Clerk's office. For further details, reference should be made to the Plan and to these statutes.

(b) Except as provided in Local Rule of Criminal Procedure 50(c), orders excluding time from the period in which a preliminary hearing, the return of an indictment, an arraignment, or the commencement of trial must occur, shall be made only on notice to all parties, and after an opportunity to be heard with respect to any proposed exclusions. Such order shall state (1) the statutory ground(s) for exclusion and insofar as relevant to the stated statutory ground(s), the factual basis therefor, (2) the number of speedy trial days which have elapsed, and (3) the number of speedy trial days remaining.

(c) The Court may issue an order, sua sponte, pursuant to 18 U.S.C. § 3161(h)(8)(A), to grant further time for consideration of motions under advisement, to reschedule a meeting or hearing due to the unavailability of counsel, or for other stated reasons, without prior notice to the parties. Under such circumstances, the Court shall provide the parties with an opportunity to file or raise objections to any such order after the entry thereof.

(d) Adjournments of motions shall be granted only in accordance with Local Rule of Criminal Procedure 12.2(d).

(e) Stipulations

(1) The attorney for the Government and the attorney for the defendant may at any time enter into stipulations with respect to the accuracy of the docket entries recording excludable time.

(2) To the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket of any excludable period of delay, the stipulation shall be conclusive as between the parties unless it has no basis in fact or law. It shall similarly be conclusive as to a co-defendant for the limited purpose of determining, under 18 U.S.C. § 3161(h)(7), whether time has run against the defendant entering into the stipulation.

(3) To the extent that the amount of time stipulated exceeds the amount recorded on the docket, the stipulation shall have no effect unless approved by the Court.

RULE 53

CAMERAS AND RECORDING DEVICES

(a) No one other than officials engaged in the conduct of court business and/or responsible for the security of the Court shall bring any camera, transmitter, receiver, portable telephone or recording device into the Court or its environs without written permission of a Judge of that Court.

Environs as used in this rule shall include the Clerk's office, all courtrooms, all chambers, grand jury rooms, petit jury rooms, jury assembly rooms, and the hallways outside such areas.

(b) The Chief Judge may waive any provision of this rule for ceremonial occasions and for non-judicial public hearings or gatherings.

RULE 56

SESSIONS OF COURT

Regular and continuous sessions of the Court shall be held at Buffalo and Rochester.

Special sessions of court may be held at such places in the District and for such periods of time as may be practicable and as the nature of the Court's business may require.

RULE 57.1

COPIES OF LOCAL RULES

Copies of these rules, and the amendments and appendices to them, shall be available upon request in the offices of the Clerk of Court in both Rochester and Buffalo. Persons other than litigants who are permitted to proceed in forma pauperis in a pending case seeking to obtain a copy of these rules by mail must provide a self-addressed envelope of at least 9" x 12" in size with sufficient postage affixed.

RULE 57.2

ATTORNEY ADMISSION TO PRACTICE

(a) Who May Apply. A person admitted to practice before the courts of New York State, including those admitted pursuant to Rule 520.9(e) of the Rules of the New York Court of Appeals, may, on motion of a member of the bar of this Court, apply to be admitted to practice in this Court upon compliance with the following provisions of this rule. Qualification to appear as an attorney of record remains subject to Local Rule of Criminal Procedure 57.3.

(b) Verified Petition. Each applicant for admission shall file with the Clerk of this Court at least thirty days prior to a hearing thereon (unless for good cause shown the Court shortens the time) a verified petition for admission stating:

- (1) the applicant's residence and office addresses;
- (2) the applicant's educational background and major areas of professional activities since initial admission to the bar;
- (3) the time, place and court where initially admitted;
- (4) whether the applicant has ever been held in contempt of court, or censured in a disciplinary proceeding, suspended or disbarred by any court or admonished by any disciplinary committee of the organized bar, or is the subject of any pending complaint before any court. If the answer is in the affirmative, the applicant shall file a separate confidential statement under seal specifying the court or disciplinary committee imposing the sanction, the date, the facts giving rise to the disciplinary action or complaint, the sanction imposed, and such other information, including any facts of a mitigating or exculpatory nature as may be pertinent, and such confidential statement, together with the petition, shall promptly be transmitted by the Clerk to the Chief Judge of the District for review;
- (5) that the applicant has read and is familiar with:
 - (A) the provisions of the Judicial Code, 28 U.S.C. §§ 1130-1452, which pertain to jurisdiction of and venue in a United States District Court;
 - (B) the Federal Rules of Civil Procedure;
 - (C) the Federal Rules of Criminal Procedure;
 - (D) the Federal Rules of Evidence;
 - (E) the Local Rules of Practice for the United States District Court for the Western District of New York;
 - (F) the Revised Plan for the Prompt Disposition of Criminal Cases for the Western District of New York; and

(G) the Code of Professional Responsibility of the American Bar Association as adopted by the New York State Bar Association.

(6) that the applicant agrees to adhere faithfully to the Code of Professional responsibility of the American Bar Association as adopted by the New York State Bar Association.

(c) Time for Admission. Applications for admission shall be entertained on the scheduled motion days in Rochester and Buffalo, or on other days deemed appropriate by the Court.

(d) Affidavit of Sponsoring Attorney. The verified petition shall be accompanied by an affidavit of an attorney of this court stating when the affiant was admitted to practice in this court, how long and under what circumstances the affiant has known the applicant, and what the affiant knows of the applicant's character.

(e) Attorneys Admitted to Other Districts Within the State. A member in good standing of the bar of the United States District Court for the Southern, Eastern or Northern District of New York may be admitted to practice in this Court without formal application upon filing with this Court a certificate of the United States District Court for such District stating that he or she is a member in good standing of the bar of that Court, together with a completed attorney's oath and the proper fee.

(f) Attorneys Admitted to Districts Outside the State. A member in good standing of any United States District Court and of the bar of the state in which such District Court is located and in which the applicant maintains an office for the practice of law, provided such District Court by rules extends a corresponding privilege to the members of the bar of this court, may apply to be admitted to practice in this Court on compliance with the provisions of parts (b), (c), (d), (g) and (l) of this rule.

(g) Oath, Pro Bono Service. Prior to being admitted to this Court, each applicant must take the oath of admission to this Court. Every member of the bar of this Court shall be available upon the Court's request for appointment to represent or assist in the representation of indigent parties. Appointments under this rule shall be made in a manner such that no attorney shall be requested to accept more than one appointment during any twelve month period.

(h) Change of Address, Etc.. All attorneys admitted to practice before this Court must advise the Clerk in writing of any change in name, firm affiliation, office address or telephone number within thirty days of such change.

(i) Admission Pro Hac Vice. An attorney duly admitted to practice in any state, territory, district or foreign country may in the discretion of the Court be admitted pro hac vice to participate before the Court in any matter in which he or she may for the time be employed.

(j) Government Attorneys. An attorney appointed by the United States Attorney General as a United States Attorney, an Assistant United States Attorney, a special attorney under 28 U.S.C. §§ 541-543, as an attorney of the Department of Justice under 28 U.S.C. § 515, or as an attorney employed by a federal agency, shall be admitted to practice before the Court on any matter within the scope of such employment.

(k) Admission to Practice in Bankruptcy Matters. Practice in bankruptcy matters before either the District Judges or the Bankruptcy Judges of this District shall be limited to attorneys admitted under this rule, subsections (a)-(j). Such attorney shall certify knowledge of such sources and provisions of bankruptcy law

and rules as the Bankruptcy Court shall require by local rule approved by this Court. The "local counsel" requirement of Rule 57.3 shall not apply in bankruptcy matters unless otherwise directed by a District Judge or Bankruptcy Judge in a specific matter. This subsection of this rule shall not apply to a student admitted under the Student Practice Rule of the Bankruptcy Court.

(l) Fees for Admission. Each applicant for admission to this Court shall pay the fee set by the Judicial Conference plus an additional fee set by the Court. Attorneys who are admitted pro hac vice shall pay to the Clerk a fee in an amount set by the Court unless such fee is waived by the presiding Judge or Magistrate Judge upon a showing of good cause. Applicants for admission should contact the Clerk's office for exact fee information. A portion of the fee charged to applicants for admission to practice before the Court and to attorneys admitted pro hac vice shall be deposited in the District Court Fund.

The Clerk shall be the trustee of the District Court Fund. Monies deposited in the District Court Fund shall be used only for the benefit of the bench and bar in the administration of justice, including, but not limited to, reimbursement of expenses incurred by counsel assigned to represent indigent clients pursuant to the provisions of this rule.

(m) Expenses of Assigned Counsel. Pro bono attorneys who are appointed pursuant to this rule and are unsuccessful in obtaining counsel fees may seek reimbursement for expenses incident to representation of indigent clients by application to the Court. Reimbursement will be permitted to the extent possible in light of available resources and pursuant to the Plan for the Administration of the District Court Fund on file with the Clerk.

RULE 57.3

ATTORNEYS OF RECORD

(a) Except as set forth below, only members in good standing of the bar of this Court may appear as attorneys of record.

An attorney who does not maintain an office in this District may commence an action. If such attorney wishes to continue as attorney of record, he or she shall, within thirty days of the initial filing, apply in writing for permission to proceed without local counsel, which application shall be granted for good cause shown and in the discretion of the Court. Such attorney shall also, as appropriate, apply for admission pro hac vice pursuant to Local Rule of Criminal Procedure 57.2.

(1) Except for attorneys appearing on behalf of the United States government or a department or agency thereof, or as otherwise provided in Local Rule of Criminal Procedure 57.3(a), any attorney who is not a member of the bar of this Court shall, unless otherwise ordered by the Court, in each proceeding in which he or she desires to appear, have as associate counsel of record ("local counsel") a member of the bar of this Court who maintains an office within this District, with whom the Court and opposing counsel may readily communicate regarding the conduct of this case and upon whom papers may be served.

(2) An attorney who is not admitted to practice in this Court pursuant to Local Rule of Criminal Procedure 57.2 shall not participate actively in the conduct of any trial or of any pre-trial or post-trial proceeding before this Court.

(b) An attorney who has appeared as attorney of record for a party may withdraw by permission of the Court for good cause shown, but withdrawal shall be effective only upon order of the Court entered after service of notice of withdrawal on all counsel of record and on the attorney's client. An attorney is not required to disclose to other counsel the reason(s) for withdrawal.

RULE 57.4

DISCIPLINE OF ATTORNEYS

(a) In addition to any other sanctions imposed in any particular case under these local rules, any person admitted to practice in this Court may be disbarred or otherwise disciplined, for cause, after hearing, and as the Court may direct. The Chief Judge of the District may appoint a Magistrate Judge or attorney(s) to investigate, advise or assist as to grievances or complaints from any source and as to applications by attorneys for relief from sanctions. Other than provided by subsection (b) of this rule, no censure, sanction, suspension or disbarment shall be applied without both notice and an opportunity to be heard and the approval of a majority of the Judges of the Court in active service, except that any Judge of this Court may for cause, revoke an admission pro hac vice previously granted by that Judge. Complaints or grievances, and any files based on them, shall be treated as confidential. Discipline shall be imposed only upon suitable order of the Court which shall or shall not be made available to the public, or published or circulated, as the Court shall determine in its discretion.

(b) Any attorney who has been disbarred from the bar of a state in which he or she was admitted to practice shall have his or her name stricken from the roll of attorneys of this Court or, if suspended from practice for a period at such bar, shall be suspended ipso facto for a like period from practice in this Court. An attorney once disbarred or suspended who seeks reinstatement to practice before this Court must reapply for admission in accordance with the provisions of Local Rule of Criminal Procedure 57.3.

(c) The Code of Professional Responsibility of the American Bar Association as adopted by the New York State Bar Association shall be enforced in this court.

(d) Nothing in this rule shall limit the Court's power to punish contempts.

RULE 57.5

STUDENT PRACTICE RULE

(a) A law student may, with the Court's approval, under supervision of an attorney, appear on behalf of any person, including the United States Attorney and the New York State Attorney General, who has consented in writing.

(b) The attorney who supervises a student shall:

(1) be a member of the bar of the United States District Court for the Western District of New York;

(2) assume personal professional responsibility for the student's work;

(3) assist the student to the extent necessary;

(4) appear with the student in all proceedings before the Court; and

(5) indicate in writing his or her consent to supervise the student.

(c) In order to be eligible to appear, the law student shall:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two semesters or the equivalent;

(3) be certified by a law school faculty member as qualified to provide the legal representation permitted by these rules. This certification may either be withdrawn by the certifier at any time by mailing a notice to the Clerk or be terminated by the Judge presiding in the case in which the student appears without notice, hearing or cause. The termination of certification by action of a Judge shall not be considered a reflection on the character or ability of the student;

(4) be introduced to the Court by an attorney admitted to practice before this court;

(5) neither ask for nor receive any compensation or remuneration of any kind for his or her services from the person on whose behalf he or she renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a state, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for his or her services;

(6) certify in writing that he or she is familiar with and will comply with the Code of Professional Responsibility of the American Bar Association as adopted by the New York State Bar Association; and

(7) certify in writing that he or she is familiar with the federal procedural and evidentiary rules relevant to the action in which he or she is appearing.

(d) The law student, supervised in accordance with these rules, may:

(1) appear as counsel in court or at other proceedings when written consent of the client (on the form available in the Clerk's office), or written consent of the United States Attorney when the client is the United States (or an officer or agency thereof) or of the Attorney General of New York when the client is the State of New York (or an officer or agency thereof) and the supervising attorney's name has been filed, and when the Court has approved the student's request to appear in the particular case to the extent that the Judge presiding at the hearing or trial permits; and

(2) prepare and sign motions, petitions, answers, briefs, and other documents in connection with the matter in which he or she has met the conditions of (d) (1) above; each such document shall also be signed by the supervising attorney.

(e) Forms for designating compliance with this rule shall be available in the Clerk's office. Completed forms shall be filed with the Clerk.

(f) Practice by students pursuant to this rule shall not be deemed to constitute the practice of law within the meaning of the rules of admission to the bar of any jurisdiction.

RULE 57.6

STUDENT LAW CLERKS

(a) A law student may, with the approval of a member of the law school faculty and of a Judge of this court, serve as a part-time law clerk to that Judge.

(b) In order to so serve, the law student shall:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two semesters or the equivalent;

(3) be enrolled in a law school course or program offering academic credit for serving as a part-time law clerk to a Judge or be certified by the dean of his or her law school for non-credit clinical experience;

(4) be supervised by a member of a law school faculty. This faculty adviser shall to the extent possible review all aspects of the student's work before it is submitted to the Judge;

(5) be certified by a faculty member of his or her law school as being of good character and competent legal ability. This certification may be withdrawn by the certifier at any time by mailing a notice to the Judge supervising the student. Termination of certification by the certifier shall not reflect on a student's character or ability unless otherwise specified. A copy of such certification and any withdrawal thereof shall be filed with the Clerk;

(6) neither be entitled to ask for nor receive compensation of any kind from the Court or anyone in connection with service as a part-time law clerk to a Judge;

(7) if required by the Judge, certify in writing that he or she will abstain from revealing any information and making any comments at any time, except to his or her faculty advisor or to court personnel as specifically permitted by the Judge to whom he or she is assigned, concerning any proceeding pending or impending in this court while he or she is serving as a part-time law clerk. A copy of such certification shall be filed with the Clerk.

(c) A Judge supervising a part-time law clerk may terminate or limit the clerk's duties at any time without notice, hearing, or cause. Such termination or limitation shall not be considered a reflection on the character or ability of the part-time law clerk unless otherwise specified.

(d) An attorney in a pending proceeding may at any time request that a part-time law clerk not be permitted to work on or have access to information concerning that proceeding and, on a showing that such restriction is necessary, a Judge shall take appropriate steps to restrict the law clerk's contact with the proceeding.

(e) In accordance with the procedure set forth in parts (a) through (d) of this rule, an eligible law student may serve as a part-time student law clerk to a Bankruptcy Judge or to a full-time Magistrate Judge in the Western District of New York.

(f) For the purposes of Canons 3-A(4) and 3-A(6) of the Code of Judicial Conduct for United States Judges, a part-time law clerk is deemed to be a member of the Court's personnel.

(g) Forms designating compliance with this rule shall be available in the Clerk's office.

RULE 58.1

ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

(a) Misdemeanor Cases.

All misdemeanor cases shall be assigned, upon the filing of an information, complaint, or violation notice, or the return of an indictment, to a Magistrate Judge, who shall proceed in accordance with the provisions of 18 U.S.C. § 3401 and Federal Rule of Criminal Procedure 58. In the event the defendant does not waive trial before the District Court as provided therein, the file shall be returned to the Clerk of the Court for assignment to a District Court Judge. The Magistrate Judge, may, however, set bond, appoint counsel, and accept a plea of not guilty without a waiver being executed.

(b) Felony Cases.

Upon the return of an indictment or the filing of an information charging a felony, arraignment may be held before a Judge or a Magistrate Judge. Further proceedings in the case shall be in accordance with the order of the Judge to whom the case is assigned. Felony cases include those in which an instrument charges both felony and non-felony offenses.

RULE 58.2

REVIEW AND APPEAL OF MAGISTRATE JUDGES' ACTIONS

(a) Review.

(1) Review of a Magistrate Judge's orders or of his or her proposed findings of fact and recommendations for disposition shall be governed by 28 U.S.C. § 636(b)(1). If the parties consent to trial before the Magistrate Judge, there shall be no review or appeal of interlocutory orders to the District Court.

(2) All orders of the Magistrate Judge issued pursuant to these rules, as authorized by 28 U.S.C. § 636(b)(1)(A), shall be final unless within ten days after being served with a copy of the Magistrate Judge's order, a party files with the Clerk and serves upon opposing counsel a written statement specifying the party's objections to the Magistrate Judge's order. The specific matters to which the party objects and the manner in which it is claimed that the order is clearly erroneous or contrary to law shall be clearly set out.

(3) A party may object to proposed findings of fact and recommendations for dispositions submitted by a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B), by filing with the Clerk and serving upon opposing counsel written objections to the proposed findings and recommendations within ten days after being served with a copy of such findings and recommendations, as provided in 28 U.S.C. § 636(b)(1)(C). The time for filing objections to the proposed findings and recommendations may be extended by direction of the Judge. The written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority.

(b) Appeals from Judgments in Misdemeanor Cases (18 U.S.C. § 3402).

Appeals from a decision, order or judgment of conviction by a Magistrate Judge shall be taken pursuant to 18 U.S.C. § 3402 and Federal Rule of Criminal Procedure 58. Appeals shall be given a criminal case number and assigned by the Clerk to a Judge. The appellant shall, within thirty days of the filing of the notice of appeal, file the record and shall also file a typewritten memorandum with the Clerk, together with two additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall concurrently serve a copy of the memorandum on the appellee(s). The appellee(s) shall file an answering memorandum within thirty days of the filing of the appellant's memorandum. The Judge may extend these time limits upon a showing of good cause. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file his or her memorandum within the time provided by the rule or any extension thereof, the Court may dismiss the appeal.

(c) Appeals from Other Orders of a Magistrate Judge.

Appeals from any other decisions and orders of a Magistrate Judge not provided for in this rule shall be taken as provided by governing statute, rule or decisional law.

RULE 58.3

FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE IN PETTY OFFENSE MATTERS

(a) This rule incorporates the rules of court relative to forfeiture of collateral in lieu of appearance in petty offense matters, copies of which are available in the Clerk's office.

(b) For petty offenses originating under the applicable federal statute or regulations or applicable state statute by virtue of the Assimilative Crimes Act (18 U.S.C. § 13) occurring within the territorial jurisdiction of a United States Magistrate Judge including areas within the boundaries of United States military installations, federal buildings and grounds, national forests, and property under the charge and control of the Veterans Administration, the person so charged shall post collateral and may, in lieu of appearance, waive appearance before a United States Magistrate Judge, and consent to the forfeiture of collateral. If collateral is forfeited, such action shall be tantamount to a finding of guilt.

(c) A list of petty offenses is available in the Clerk's office appended to the rules of court referred to in subdivision (a) of this local rule. Those offenses marked with an asterisk (*) and for which no amount of collateral is shown require a mandatory appearance before a United States Magistrate Judge.

(d) If a person charged with an offense under section (a) of this rule fails to post and forfeit collateral, any punishment, including fine, imprisonment or probation may, upon conviction, be imposed within the limits established by the applicable law.

(e) Nothing contained in this rule shall prohibit a law enforcement officer from arresting a person for the commission of any offense, including those for which collateral may be posted and forfeited, in which event the arrested person shall without unnecessary delay be taken before the nearest available United States Magistrate Judge or, in the event that a Magistrate Judge is not reasonably available, before a state or local judicial officer authorized by 18 U.S.C. § 3041, as provided in Federal Rule of Criminal Procedure 5.

RULE 59

MODIFICATION OF RULES

Any of the foregoing rules shall, in special cases, be subject to such modifications as may be necessary to meet emergencies or to avoid injustice or great hardship.

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